



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

September 13, 1962

Mr. H. D. Dodgen
Executive Secretary
Game and Fish Commission
Austin, Texas

Opinion No. WW-1439

Re: Validity of Item 12b
of the current appro-
priation for the Game
and Fish Commission,
Ch. 62, Acts 1961, 57th
Leg., 1st Called Ses-
sion, regarding construc-
tion of piers, ramps and
related questions.

Dear Mr. Dodgen:

Your request for an opinion reads as follows:

"Your opinion WW-959 dated November 15, 1960, in response to a request from this Department held that 'The Legislature has not authorized the Game and Fish Commission to expend funds from the (Special) Game and Fish Fund for the construction of piers into the Gulf of Mexico or inland bays for the purpose of accommodating the public in recreational fishing activities.'

"Item 12b of the current appropriation for the Game and Fish Commission, Ch. 62, Acts 1961, 57th Legislature, 1st Called Session, p. 203 at p. 293, reads as follows:

For the Years Ending	
August 31, 1962	August 31, 1963

b. For construction of piers, ramps, restrooms, and shelters for the use of fishermen in State Parks along the Gulf Coast and other areas of the State, including NTE \$8,000 for rehabilitating	\$	\$
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the Port Lavaca pier, out of receipts to the Special Game and Fish Fund derived from fishing licenses.	\$100,000	\$100,000
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"The Game and Fish Commission has not expended the funds thereby appropriated, in the belief that the appropriation is void by reason of a lack of pre-existing law, Article 3, Sec. 44, Constitution of Texas, 1876. A bill was introduced at the Regular Session of the 57th Legislature which would have specifically authorized such an expenditure; however, it did not pass.

"In view of the fact of the appropriation, it is deemed advisable again to seek the opinion of the Attorney General in respect to the question:

"Is the appropriation contained in Item 12b, supra, a valid and effective appropriation?"

Attorney General's Opinion WW-959 (1960) held that the Legislature had not authorized the Game and Fish Commission to construct piers into the Gulf of Mexico or the inland bays for the purpose of accommodating the public in recreational fishing activities.

House Bill 710, introduced at the Regular Session of the 57th Legislature, would have expressly authorized the expenditure contained in Item 12b of the appropriations for the Game and Fish Commission. However, this bill was not passed out of the Game and Fish Committee of the House.

Article III, Section 44 of the Texas Constitution provides as follows:

"Sec. 44. The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same;

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nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law."

On the basis of the provisions of this Section, it has been uniformly held that an appropriation by the Legislature is void, if not authorized by pre-existing law. State v. Haldeman, 163 S.W. 1020 (Civ.App. 1913, error ref.); Austin National Bank v. Sheppard, 123 Tex. 272, 71 S.W.2d 242 (1934); Corsicana Cotton Mills v. Sheppard, 123 Tex. 352, 71 S.W.2d 247 (1934).

Therefore, you are advised that the appropriation contained in Item 12b, supra, is void by reason of the absence of pre-existing law.

S U M M A R Y

Item 12b of the Current Appropriation for the Game and Fish Commission, Ch. 62, Acts 1961, 57th Legislature, 1st Called Session, regarding the construction of piers, ramps, and related structures is void by reason of the absence of pre-existing law.

Very truly yours,

WILL WILSON
Attorney General of Texas

By: *I. Raymond Williams, Jr.*
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Assistant

IRW:mkh

APPROVED:
OPINION COMMITTEE
W. V. Geppert, Chairman
Robert Rowland
Norman Suarez
Grady Chandler
REVIEWED FOR THE ATTORNEY GENERAL
BY: Leonard Passmore